

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES G. BROWN,	§
	§ No. 437, 2008
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9705011656
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 12, 2008

Decided: January 30, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 30th day of January 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, James G. Brown, filed an appeal from the Superior Court's August 14, 2008 order denying his sixth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In April 1998, a Superior Court jury found Brown guilty of Assault in the First Degree as a lesser-included offense of Attempted Murder, Assault in the Second Degree, Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, Resisting Arrest, and three weapon offenses. He was sentenced to a total of 19½ years of Level V incarceration. Brown's convictions and sentences were affirmed by this Court on direct appeal.²

(3) In this appeal, Brown claims that the Superior Court abused its discretion by denying his latest motion for postconviction relief on procedural grounds. He contends that his counsel provided ineffective assistance by failing to raise a Brady claim on direct appeal and that the Superior Court should have held a hearing on his motion. Brown also claims that the Superior Court improperly denied his motion for discovery and his motion for transcripts at State expense.

(4) Before reaching the merits of any postconviction claims, the Superior Court must address the procedural requirements of Rule 61.³ Under former Rule 61(i) (1), a motion for postconviction relief may not be

¹ Supr. Ct. R. 25(a).

² *Brown v. State*, Del. Supr., No. 242, 1998, Walsh, J. (Mar. 15, 1999).

³ *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

filed more than three years after the judgment of conviction becomes final.⁴ In this case, Brown's convictions became final in 1999 when this Court denied the claims made in his direct appeal. His latest motion was filed in 2008, approximately nine years after his convictions became final. As a result, Brown's claims are time-barred unless he can demonstrate that the Superior Court lacked jurisdiction or that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁵ There is no evidence in the record before us that Brown is entitled to relief under Rule 61(i) (5).

(5) In addition to being time-barred, Brown's claims also are procedurally barred either as repetitive⁶ or as previously adjudicated.⁷ Moreover, he has failed to overcome those procedural bars by demonstrating that consideration of his claims is warranted in the interest of justice.⁸ Brown has not demonstrated that the Superior Court abused its discretion when it did not schedule a hearing and summarily denied his motion.⁹ Finally, Brown articulated no reasonable basis for his discovery request or

⁴ The current version of the rule provides for a one-year time period.

⁵ Super. Ct. Crim. R. 61(i) (5).

⁶ Super. Ct. Crim. R. 61(i) (2).

⁷ Super. Ct. Crim. R. 61(i) (4).

⁸ Super. Ct. Crim. R. 61(i) (2) and (4).

⁹ Super. Ct. Crim. R. 61(h) (3).

his request for transcripts at State expense. For all of the above reasons, the Superior Court properly denied Brown's claims.

(6) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice